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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120312181-2228-01]

RIN 0648-BC00 and 0648-BC01

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Advance Notice of Proposed Rulemaking regarding the Reconsideration of the Allocation of Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments

SUMMARY: A court order issued February 21, 2012, remands for agency reconsideration the regulations addressing the initial allocation of whiting for the shorebased individual fishing quota (IFQ) fishery and the at-sea mothership fishery of the Pacific Coast Groundfish Trawl Rationalization Program (Program) and requires that NMFS implement revised regulations before the 2013 Pacific whiting fishing season begins on April 1, 2013. The purpose of this advanced notice of proposed rulemaking (ANPR) is to announce that the Pacific Fishery Management Council (Council) will be reconsidering the initial allocation of whiting at its April, June, and September 2012 meetings, and that NMFS is considering two rulemakings in response to the court order. The affected public should be aware of potential reallocation of whiting, as well as potential reallocation of a portion of the initial allocation of Quota Share (QS) for some incidentally caught, nonwhiting species. Additionally, this ANPR announces that the affected public should review, and if necessary, correct their data, which may be used for reconsideration

and any reallocation that may occur.

DATES: Comments on this ANPR must be received no later than 5 p.m., local time on [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0062, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal, at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0062 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Fax: 206-526-6736; Attn: Ariel Jacobs.
- Mail: William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; Attn: Ariel Jacobs.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter “N/A” in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206-526-4491; (fax) 206-526-6736; Ariel.Jacobs@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 2012, Judge Henderson issued a court order in Pacific Dawn, LLC v. Bryson, No. C10-4829 TEH (N.D. Cal.). The court order remands the regulations addressing the initial allocation of whiting for the shorebased IFQ fishery and the at-sea mothership fishery “for further consideration” consistent with the court’s December 22, 2011, summary judgment ruling, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and all other governing law. Further, the court order requires that NMFS implement revised regulations before the 2013 Pacific whiting fishing season begins on April 1, 2013. In the interim, the existing regulations remain in effect, unless suspended or revised by NMFS.

In light of the court order, the Council will be reconsidering the initial allocation of whiting at its April, June, and September 2012 meetings. The Council is scheduled to select a range of alternatives at its April meeting, a preliminary preferred alternative at its June meeting, and a final preferred alternative and recommendation to NMFS at its September meeting. Depending on Council recommendations and NMFS actions, some of the nonwhiting QS issued for the shorebased whiting fishery in proportion to the whiting allocations, could also be affected by the reallocation of whiting. Further information regarding the Council meetings may be found at <http://www.pcouncil.org/council-operations/council-meetings/>.

NMFS plans to publish at least two rulemakings in response to the court order, referred to as Reconsideration of the Allocation of Whiting, Rules 1 and 2 (RAW 1 and RAW 2). The rulemaking for RAW 1 would delay at least two elements of the current regulations until reconsideration of the initial allocation has concluded, including the transfer of QS or Individual Bycatch Quota (IBQ) between QS accounts and the ability to change mothership catcher vessel

(MS/CV) endorsement and associated catch history assignment from one limited entry trawl permit to another. In addition, NMFS may need to hold back sufficient quota pounds for whiting and all other incidentally caught species from the annual allocation of quota pounds (QPs) to QS accounts made on or about January 1, 2013 in order to allocate the appropriate final amounts based on recalculation of QS allocations. NMFS may also need to consider whether it is necessary to restrict limited entry trawl permit transfers for a period of time during this reconsideration. For the at-sea mothership fishery, NMFS may need to recalculate the whiting catch history assignments which may have an impact on processor obligations and cooperation, both of which occur before April 1, 2013.

In the proposed rule for RAW 1, NMFS will announce further details on the process for data review and corrections. As occurred in 2009-2010, prior to the implementation of the current Program, the affected public will be advised to review, and if necessary, correct their data that may be used for initial allocation, or reallocation. NMFS anticipates publishing the proposed rule for RAW 1 in late April, and the final rule in July 2012.

The rulemaking for RAW 2 would take in to account the Council's September 2012 recommendation and reconsideration of the dates used for initial allocation of whiting for the shorebased IFQ and at-sea mothership fisheries. The proposed rule for RAW 2 is scheduled to publish in November 2012, and the final rule in March 2013. This rule would be effective by April 1, 2013, consistent with the court order.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: March 29, 2012

Alan D. Risenhoover,
Acting Deputy Assistant Administrator
For Regulatory Programs,
National Marine Fisheries Service.

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